

**REMARKS**

Applicants respectfully request reconsideration of the instant application in the view of the foregoing amendments and the following remarks. Claims 31, 38-41, 55, 61, 65-68 are currently pending in the instant application. Claims 37 and 64 have been cancelled. Claims 31 and 55 are independent. Claims 31, 38, 40, 55, 61, 65, and 67 are currently amended by this submission. Applicants submit that support for the Amendment may be found throughout the specification and originally-filed claims, and that no new matter has been added.

**Rejection Under 35 USC § 103**

Claims 31, 37-41, 55, 61, 64-68 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over McCall et al. US Patent No. 6,321,984 (hereafter "McCall"), in view of "Weather futures bet will give Tucson firms a hedge against loss," Arizona Daily Star, Tucson, Arizona, 5 February 1999 (hereafter "Weather Futures"). Applicants respectfully disagree.

**[0001]** With regard to claims 31, 40, 41, 55, 61, 67, 68, the Examiner alleges that McCall "discloses a system and method for determining a program price for fuel" (12/15/06 Office Action, page 3). Applicants respectfully disagree with the Examiner's characterization of McCall. McCall discloses only an intermittent customer rewards system that "will track the customer purchases and compare them with a predefined criteria to determine when a fuel discount is to be provided. When a customer meets one of the predefined criteria, the reward system will authorize a fuel discount and provide the customer with a mechanism to obtain the fuel at a discounted unit price" (McCall, Abstract).

**[0002]** The reward system of McCall determines a one-time per-unit discount, with no relation to price, provided to a customer based on the customer's prior purchasing behavior

meeting certain criteria, such as exceeding "a quantity threshold, a dollar value threshold, made purchases made on specific dates, or the like" (McCall, column 2, lines 34-36).

**[0003]** With regard to independent claim 31 and claims depending therefrom, Applicants respectfully submit that McCall does not disclose "calculating a guaranteed program price for a type of vehicle fuel, using customer usage data and said finder's fee amount of said program sponsor data, wherein said customer usage data includes a quantity of fuel to be purchased and a number of months during which the guaranteed program price will apply for the type of fuel to be purchased" as required by amended independent claim 31. Similarly, with regard to independent claim 55 and claims depending therefrom, McCall does not disclose "calculating a guaranteed program price using the received customer usage data and program sponsor data, wherein said usage data includes a quantity of fuel to be purchased, a number of months during which the guaranteed program price will apply and a type of fuel to be purchased," as required by amended independent claim 55. Instead, the reward system in McCall "adjusts the purchase price by subtracting the discount amount and allows the fuel to be dispensed at that rate for this transaction only" (McCall, column 2, lines 52-55); i.e., the purchase price in McCall is not guaranteed, rather, it is just the pump price at the time of purchase.

**[0004]** As noted by the Examiner, "McCall does not disclose using the usage data and sponsor fee amount (data related to a fee to be paid by a third party) to develop a financial hedging strategy that can diminish the risk associated with the volatility of fuel prices" (12/15/06 Office Action, page 4). Moreover, McCall makes no mention of risk generally, let alone risk associated with the rewards system.

**[0005]** Applicants respectfully submit that the reason McCall does not discuss developing a financial hedging strategy is that there is no relevant risk associated with the

rewards system of McCall. McCall discusses a one-time or time-by-time rewards system based on prior purchases and "the customer's achievement of predefined purchasing criteria" (McCall, column 2, lines 24-25). In particular, McCall states that in order to receive a fuel discount, a customer must have "earned a fuel discount" (McCall, column 10, line 61 and Figure 10), i.e., the discounts of McCall's reward system are compensated for by the customer's prior purchase or purchases and are for a set amount (e.g., \$0.10 a gallon). For example, McCall states "purchasing greater than 20 items within a month will cause a \$0.10 fuel discount to be offered and exceeding \$100.00 in total purchase price will cause a \$0.15 fuel discount (McCall, column 10, lines 19-22, and figure 9). Moreover, the cost of the unit-price discounts offered by McCall (e.g., \$0.10, \$0.15, or \$0.25 per gallon) are unrelated to fluctuations in the price of gas, i.e., providing a \$0.10 discount on a gallon of gas costs the same whether gas is selling at \$2/gallon or \$4/gallon. Thus, there is no need or use for hedging in the rewards system disclosed by McCall.

**[0006]** Regarding Weather Futures, the article does not in any way disclose "calculating a guaranteed program price for a type of vehicle fuel, using customer usage data and said finder's fee amount of said program sponsor data, wherein said customer usage data includes a quantity of fuel to be purchased and a number of months during which the guaranteed program price will apply for the type of fuel to be purchased" as required by amended independent claim 31 and claims depending therefrom. Similarly, Weather Futures does not disclose "calculating a guaranteed program price using the received customer usage data and program sponsor data, wherein said usage data includes a quantity of fuel to be purchased, a number of months during which the guaranteed program price will apply and a type of fuel to be purchased," as required by amended independent claim 55 and claims depending therefrom.

**[0007]** Instead, Weather Futures simply discusses hedging home fuel based future weather, as noted by the Examiner, "the article discloses that a natural gas company can 'hedge' itself against lost revenues if a warm winter cuts sales" (12/15/06 Office Action, page 4). However, the Examiner asserts that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the usage data deemed as necessary or relevant data, to develop a financial hedging strategy to help prevent foreseeable losses due to changing demand and fuel prices" (12/15/06 Office Action, page 4). Applicant respectfully disagrees. As discussed above, the rewards system of McCall makes no mention of risk and is independent of the price of gas, thus having no need or use for hedging generally, let alone the weather derivatives discussed in Weather Futures.

**[0008]** Thus, it is respectfully submitted that since McCall and Weather Futures are missing the claimed element of "calculating a guaranteed program price for a type of vehicle fuel, using customer usage data and said finder's fee amount of said program sponsor data, wherein said customer usage data includes a quantity of fuel to be purchased and a number of months during which the guaranteed program price will apply for the type of fuel to be purchased," the combination of said references similarly does not result in nor do they anticipate claim 31 for at least the same reason.

**[0009]** Claims 38-41 depend from independent claim 31. As such, they contain the same "calculating a guaranteed program price for a type of vehicle fuel, using customer usage data and said finder's fee amount of said program sponsor data, wherein said customer usage data includes a quantity of fuel to be purchased and a number of months during which the guaranteed program price will apply for the type of fuel to be purchased" limitation shown to be absent from both McCall and Weather Futures, as discussed above. Accordingly, it is respectfully submitted that

claims 38-41 are not obvious over the combination of McCall and Weather Futures for at least the same reasons discussed above.

**[0010]** Similarly, it is respectfully submitted that since neither McCall nor Weather Futures individually address "calculating a guaranteed program price using the received customer usage data and program sponsor data, wherein said usage data includes a quantity of fuel to be purchased, a number of months during which the guaranteed program price will apply and a type of fuel to be purchased," the combination of said references similarly does not anticipate claim 55 for at least the same reason.

Claims 61 and 65-68 depend from independent claim 55. As such, they contain the same "calculating a guaranteed program price using the received customer usage data and program sponsor data, wherein said usage data includes a quantity of fuel to be purchased, a number of months during which the guaranteed program price will apply and a type of fuel to be purchased" limitation shown to be absent from both McCall and Weather Futures, as discussed above. Accordingly, it is respectfully submitted that claims 61 and 65-68 are not obvious over the combination of McCall and Weather Futures for at least the same reasons discussed above.

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no reason, rationale or motivation (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)) for such a combination of references, and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 31, 38-41, 55, 61, 65-68, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims

over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed here or in previous amendments/responses, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

#### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17209-075.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is

hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17209-075

Respectfully submitted,  
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